

# ***HOUSE TRANSPORTATION & DEFENSE COMMITTEE***

## ***ADMINISTRATIVE RULES REVIEW***

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#### ***2008 Legislative Session***

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## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0105-0701**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 63-105, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, pages 351 through 364.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Randy Nilson at (208) 334-7530.

DATED this 1st day of November, 2007.

Randy Nilson  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is December 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 105:** To notify gaseous fuels distributors that a bad debt credit cannot be claimed on or after December 1, 2007, and to show that a gaseous fuels distributor pays fuels taxes and permit fees to the Tax Commission.

**Rule 130:** To be consistent with the passage of House Bills 14 and 249a; to remove a deduction for gallons delivered to an Indian-owned retail outlet and to add a deduction for fuel that is the subject of an agreement authorized by section 67-4002, Idaho Code, only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007; to refer to other limitations for the deduction contained in Idaho Code section 63-2407; to show how the 2% allowance was distributed before December 1, 2007; to show how the 2% allowance is distributed on and after December 1, 2007; and to notify fuels distributors that a bad debt credit cannot be claimed on or after December 1, 2007.

**Rule 140:** To be consistent with the passage of House Bill 249a; to show how the 2% allowance was distributed before December 1, 2007; to show how the 2% allowance is distributed on and after December 1, 2007; and to notify fuels distributors that a bad debt credit cannot be claimed on or after December 1, 2007.

**Rule 160:** To be consistent with the passage of House Bill 249a, and to show that a licensed fuels distributor pays aircraft engine taxes to the Tax Commission.

**Rule 180:** To be consistent with the law due to the passage of House Bill 249a, to remove bad debt credit and update the language.

**Rule 270:** Adding December 1, 2007, cutoff date to be consistent with the law due to the passage of House Bill 249a and to show that purchases of motor fuels from an Indian-owned retail outlet after December 1, 2007, may not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase

**Rule 292:** Adding December 1, 2007, cutoff date to be consistent with the law due to the passage of House Bill 249a and to show that purchases of motor fuels from an Indian-owned retail outlet after December 1, 2007, may not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase.

**Rule 510:** To be consistent with the passage of House Bills 14 and 249a, to remove “cost of collections” in regard to the 2% discount granted to licensed fuel distributors when they pay motor fuels taxes, and to add biodiesel to the list of products subject to the transfer fee.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(2), the Governor has found that temporary adoption of the rule is appropriate for the following reasons: In compliance with deadlines in amendments to governing law.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 17th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**105. LICENSED GASEOUS FUELS DISTRIBUTOR’S REPORTS (RULE 105).**

**01. Monthly Reports.** Every licensed gaseous fuels distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (7-1-99)

- a. The total taxable gallons of gaseous fuels delivered into the supply tank of registered motor vehicles; (3-30-07)
- b. The taxable gallons after deduction of a two percent (2%) allowance. See Rule 140 of these rules; (4-5-00)
- c. The tax computation; (7-1-99)
- d. The bad debt amount, if any. (This credit or debit only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.) See Rule 140 of these rules; ~~(4-5-00)~~( )
- e. The gaseous fuels permit fees (Attach to the report the yellow copy of the receipt for each gaseous fuels permit sold during that month); and (4-5-00)
- f. The net tax due; (4-5-00)
- g. A receipt schedule reporting the total number of taxable gallons of gaseous fuels sold must be attached to the distributor's report. (4-5-00)

**02. Report Due and Payment Required.** The report shall be due on or before the last day of the month following the month to which the report relates together with the payment of any tax, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-99)

**03. Failure to ~~Collect and Remit~~ Pay Tax and Permit Fees.** Any gaseous fuels distributor required to ~~collect~~ pay the tax or permit fee imposed by Section 63-2424, Idaho Code, who fails to ~~collect~~ pay such tax or permit fee, ~~or any gaseous fuels distributor required to remit the tax or permit fee pursuant to this section who fails to make such remittance~~ shall be liable to the State Tax Commission for the amount of tax or permit fee not ~~collected or remitted~~ paid plus any applicable penalty or interest. The State Tax Commission may collect such amounts in the manner provided in Section 63-2434, Idaho Code. ~~(7-1-99)~~( )

**04. Receipt of Gaseous Fuels.** The special fuels tax is not imposed on gaseous fuels when the fuels are received in Idaho. (4-5-00)

**05. Gaseous Fuels.** Propane and natural gas are presumed to be tax-exempt fuels unless delivered into the supply tank of a registered, or required to be registered, motor vehicle. (3-30-07)

**06. Annual Fees for Gaseous Fuels Permits.** Persons operating vehicles powered by gaseous fuels may pay an annual fee for a gaseous fuels permit instead of paying the special fuel taxes at the time propane or natural gas is purchased. Gaseous fuels distributors who sell these permits shall issue a permit that will be in the form of a decal to be displayed in a conspicuous spot visible from the outside of the permitted vehicle. The fees for gaseous fuels permits are based on the gross vehicle weight of the vehicles and are set by Rule 115 of these rules as is mandated by Section 63-2424(2), Idaho Code. The gaseous fuels permit is valid for the annual permit period

of July 1 through June 30 of the following year. The annual permit period displayed on the decal will be the year in which the decal expires. (4-5-00)

**07. Documentation of Untaxed Gaseous Fuels Delivered into Motor Vehicles.** Gaseous fuels delivered into the fuel supply tank of a registered, or required to be registered, motor vehicle are taxable except for: (3-30-07)

**a.** Government. Gaseous fuels used by vehicles owned or leased, and operated by the federal government, or by an instrumentality of the state of Idaho, including all of its political subdivisions, are exempt from the special fuels tax on gaseous fuels. In this case, the licensed distributor must record on the document of sale, the name of the governmental entity, the license or identification number, and the type of vehicle. (7-1-99)

**b.** Gaseous Fuels Decal. Gaseous fuels dispensed into the fuel supply tank of a motor vehicle displaying a valid Gaseous Fuels Decal are exempt from tax. For the exempt status to be valid, the purchaser's name, address, vehicle license number, and the words "gaseous fuels decal" must be recorded on the sales document. (4-5-00)

**08. Completion of Gaseous Fuels Receipt Book(s).** The following information is required to be recorded by a gaseous fuels distributor in his gaseous fuels receipt book for each gaseous fuels permit (decal) sold: (4-5-00)

- a.** The date; (4-5-00)
- b.** The amount; (4-5-00)
- c.** One (1) of the following weight classes: (4-5-00)
  - i.** Zero - eight thousand pounds (0 - 8,000 lbs.); or (4-5-00)
  - ii.** Eight thousand one - sixteen thousand pounds (8,001 - 16,000 lbs.); or (4-5-00)
  - iii.** Sixteen thousand one - twenty-six thousand pounds (16,001 - 26,000 lbs.); or (4-5-00)
  - iv.** Twenty-six thousand one pounds (26,001 lbs.) and over. (4-5-00)
- d.** The current month; (4-5-00)
- e.** The annual permit period; (4-5-00)
- f.** The customer's name and vehicle license plate number; (4-5-00)
- g.** The name and license number of the gaseous fuels distributor who is selling the permit; and (4-5-00)
- h.** The signature of the salesperson. (4-5-00)

**09. Annual Reconciliation of Gaseous Fuels Receipt Books and Decals.** A distributor who sells gaseous fuels permits must reconcile its account with the State Tax Commission for the annual permit period ending June 30, by July 31, of the same year. Distributors may begin ordering decals and receipt books in May for the upcoming annual permit period. The following is required to be received by the State Tax Commission for reconciliation: (4-5-00)

- a. All unused/unsold gaseous fuels decals; (4-5-00)
- b. All voided receipts (white and yellow copies) not previously submitted with the distributor report; (4-5-00)
- c. All receipt books (pink copies must be intact); and (4-5-00)
- d. A completed gaseous fuels reconciliation form which includes: (4-5-00)
  - i. The number of decals ordered for the annual permit period; (4-5-00)
  - ii. The number of decals sold for the annual permit period; (4-5-00)
  - iii. The balance of decals at the end of the annual permit period; and (4-5-00)
  - iv. The number, if any, of decals lost or destroyed. If decals are lost or destroyed, a statement describing the circumstances of the loss or destruction must accompany the distributor's gaseous fuels permit reconciliation. (4-5-00)

**10. Assessment for Unaccounted for Decals.** Two hundred and eight dollars (\$208) will be assessed for each decal not accounted for during the annual reconciliation, unless there is clear and convincing evidence the decal was destroyed or mutilated. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).**

**01. Monthly Reports.** Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may

require: (3-30-01)

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)

b. The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)

c. The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)

i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)

ii. Exported; (4-11-06)

iii. Delivered to the Idaho National Guard tax exempt; or (4-11-06)

iv. ~~Delivered to an Indian-owned retail outlet tax not collected.~~ Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. ~~(4-11-06)( )~~

d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)

e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)

f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)

g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)

h. The tax-paid purchases; (7-1-98)

i. The net taxable gallons; (7-1-98)

j. The gallons of ethanol ~~and biodiesel~~ reported in ethanol ~~blends~~, blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel ~~blends~~, and biodiesel blended fuel, ~~(limited~~ The deduction for biodiesel is up to ten percent (10%) of the total volume). See Section 63-2407, Idaho Code, for other limitations to these deductions; ~~(4-11-06)( )~~

k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; ~~(7-1-99)( )~~



**l.** The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; ( )

**m.** The tax computation; (7-1-98)

**n.** The bad debt amounts, refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (~~7-1-98~~)( )

**o.** The gaseous fuels permit fees; and (4-11-06)

**p.** The net tax due. (4-11-06)

**02. Report Due and Payment Required.** The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-99)

**03. Machine Tabulated Data.** Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

**04. Supplemental Reports.** In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

**05. Timely Reporting.** Any petroleum product shipments that are: (7-1-98)

**a.** Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

**b.** Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

**06. Motor Fuels Receipts.** All gasoline, gasohol, aircraft engine fuel, and undyed diesel fuel received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are

subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. DEDUCTIONS (RULE 140).**

**01. Motor Fuels and Petroleum Products Presumed To Be Distributed.** Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. (7-1-98)

**02. Distributor's and Retail Dealer's Allowances for Motor Fuels.** (This Subsection only applies to sales of motor fuels made before December 1, 2007.) The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for motor fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of motor fuel to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: ~~(4-6-05)~~( )

- a. That the amount of the allowance has been passed on; or (7-1-98)
- b. A statement that the allowance has been deducted in determining the price. (7-1-98)

**03. Distributor's Allowance for Motor Fuels.** (This subsection only applies to sales of motor fuels made on and after December 1, 2007.) The State Tax Commission will allow a two percent (2%) allowance granted in Section 63-2407, Idaho Code, to reimburse the licensed distributor for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty. ( )

**034. Exported Fuel.** Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: (7-1-98)

- a. Tax reports or other evidence that will verify that the exported product was

reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and (7-1-98)

**b.** Common carrier shipping documents, bills of lading, manifests, and cost billings; or (7-1-98)

**c.** Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or (7-1-98)

**d.** Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. (7-1-98)

**e.** In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. (7-1-98)

**045. Bad Debt Write-Off.** (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.) A distributor may take a bad debt tax credit for fuel taxes paid on sales made after July 1, 1995. After the debt has been written off for income tax purposes in the distributor's records, the distributor may claim the credit on its fuel tax report for the month in which it made the bad debt adjustment. (~~4-11-06~~)( )

**a.** First-in/first-out method for partial payments. When a distributor receives partial payments on a fuel account that includes taxable and nontaxable fuel sales, the distributor must apply the payments to the unpaid fuel sales on a first-in/first-out basis before calculating the amount of the bad debt credit. (4-11-06)

**b.** Proration of partial payments. When a distributor receives partial payments on a fuel account, before and/or after claiming a bad debt credit on its fuel tax report, the distributor must prorate the taxable and nontaxable fuel sales that occurred on the same day or on the same invoice for each such account. (4-11-06)

**c.** Amount of credit allowed. A distributor may claim a credit or refund on its monthly fuels tax report for fuels tax that is found to be uncollectible. If both nontaxable and taxable fuel sales are included in the fuel account, a distributor may take credit only for the portion of the bad debt that represents unpaid fuels tax. (4-11-06)

**d.** Multiple accounts - allocation of unspecified payments. If a distributor receives an unspecified payment from a customer that may be applied to an unpaid fuel account and nonfuel accounts, the distributor must allocate the payment to the various accounts upon receipt of the partial payment. If the distributor fails to make the allocation at the time the payment is received, the entire amount of the payment will be allocated to the customer's fuel account for purposes of calculating the amount of the credit. (4-11-06)

**e.** Statute of limitations for bad debt claim. A distributor may receive a credit or refund of fuels taxes in Subsection 140.04 of this rule if a written claim is filed with the State Tax

Commission within three (3) years from the date the tax was paid to the State Tax Commission.  
The State Tax Commission will review all such refund claims. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. AIRCRAFT ENGINE FUEL TAX (RULE 160).**

All provisions of Chapter 24, Title 63, Idaho Code, and of these rules relating to ~~collection~~ the payment of the tax on gasoline shall be applicable to the ~~collection~~ payment of the aircraft engine fuel tax imposed by Section 63-2408, Idaho Code. (6-23-94)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. REFUNDS TO LICENSED FUEL DISTRIBUTORS (RULE 180).**

**01. Requirements of a Valid Refund Claim.** Before the State Tax Commission can credit or refund motor fuels taxes or transfer fee, the licensed fuel distributor making the claim must establish both of the following: (\_\_\_\_)

**a.** The basis for the credit or refund claim, and (\_\_\_\_)

**b.** The amount of the credit or refund. (\_\_\_\_)

**042. Refund Claim.** Any licensed fuel distributor believing that he has paid motor fuels taxes or transfer fees in any amount more than properly imposed may file a claim with the State Tax Commission for a refund of such excess motor fuels taxes or transfer fee on forms prescribed by the State Tax Commission. The claim for refund must conform with the requirements of this rule. (3-15-02)

**023. Refund Claim Documentation.** The claim must be filed on a distributor's fuel tax report and must include the full name and address of the claimant and his fuel distributor's license number. If the claim is for a casualty loss, the claim must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the motor fuel tax relates and must be filed on a distributor's fuel tax report for the period for which the claimed excess motor fuel tax or transfer fee amount was paid. (4-11-06)

**034. Refund as a Credit.** A ~~claimant~~ licensed fuel distributor may claim a ~~bad debt credit~~ refund for motor fuels taxes or transfer fee as a credit against motor fuels taxes or transfer fee due on ~~the~~ his distributor's fuel tax report. (3-15-02)(\_\_\_\_)

**045. Statute of Limitation.** No claim for refund will be allowed by the State Tax Commission if it is filed more than three (3) years from the time the payment of the claimed

excess motor fuels taxes or transfer fee was made. The time the payment was made is the date upon which the distributor's fuel tax report relating to the payment was filed or was required to be filed, whichever occurred first. (3-15-02)

**056. Appeal Procedures.** No claim for refund may be filed relating to any motor fuels taxes or transfer fees that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that motor fuels taxes or transfer fee have been erroneously or illegally collected by the State Tax Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law. (3-15-02)

**067. Notice of Denial.** All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. When seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Idaho Administration and Enforcement Rule 300, as incorporated herein by Rule 330 of these rules. Such a petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to, or served upon, the claimant. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. REFUND CLAIMS -- DOCUMENTATION (RULE 270).**

**01. Refunds to Consumers.** Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. Each invoice must contain or show the following, in addition to the requirements outlined above: (4-11-06)

- a.** A preprinted identification number; (4-11-06)
- b.** Name and address of seller; (7-1-98)
- c.** Name of purchaser; (7-1-98)
- d.** Date of delivery; (7-1-98)
- e.** Type of motor fuel; (7-1-98)
- f.** Gallons invoiced; (7-1-98)

- g.** Price per gallon; (7-1-98)
- h.** At least one (1) of the following to establish that tax has been charged: (7-1-98)
- i.** The amount of Idaho state fuels tax; (7-1-98)
- ii.** The rate of Idaho state fuels tax; or (7-1-98)
- iii.** A statement that the Idaho state fuels tax is included in the price. (7-1-98)

**02. Indian-Owned Retail Outlet.** Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. ~~(4-11-06)~~( )

**03. Corrected Invoices.** No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and retained by the seller for at least three (3) years from the date issued. (7-1-98)

**04. Invoice Retention.** The original invoices required by Subsection 270.01 of this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98)

**05. Refund Documents.** For refund claims under Section 63-2410(5)(c), Idaho Code, an original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (7-1-98)

**06. Records Required for Motor Fuels Tax Refunds.** Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both taxable and nontaxable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (4-11-06)

**a.** Use of Fuel from a Single Storage Tank. Idaho tax-paid fuel (other than fuel purchased by persons who operate motor vehicles that are licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 290 and Rule 292 of these rules) purchased and delivered into a single bulk storage tank and withdrawn for both nontaxable and taxable uses must be accounted for

using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless an alternate percentage is requested by the taxpayer and authorized by the State Tax Commission. The request shall itemize anticipated uses by type of equipment based on previously experienced use. The State Tax Commission will refund taxes paid on the percentage of taxed fuel presumed to be exempt. If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. The proration or another percentage granted by this paragraph cannot be used if you have separate storage tanks for undyed diesel and dyed diesel. (3-30-07)

**b.** Use of Fuel from Multiple Storage Tanks. When separate bulk storage tanks are maintained for both exempt and taxable uses, the seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel is purchased by persons who operate motor vehicles that are licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 290 and Rule 292 of these rules. All fuel invoices must be retained as required by Subsection 270.03 of this rule. Exempt fuel may not be used in motor vehicles registered or required to be registered. (3-30-07)

**c.** Use of Fuel for Other Than Bulk Storage. Fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motorboats, or vehicles other than registered motor vehicles, must be identified on the purchase invoice. No other records will be required. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).**

**01. Fuel Records Required for Refund Claims.** Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power take-off (PTO) equipment. Records must be kept as described in Subsection 290.01 of these rules. (4-5-00)

**02. Nontaxable Miles Defined.** Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 292.03 of this rule. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 130 of these rules regarding application of Idaho Sales and Use Taxes. (4-6-05)

**03. Additional Nontaxable Roadways.** Roadways defined in Section 63-2401, Idaho Code, include those constructed and maintained by the United States Forest Service, the United

States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. The special fuels user must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision, unless using the “standard MPG” for its industry found in Subsection 290.02 of these rules. When special fuels users compute their special fuels tax liability or refund, they may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways if the cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway. (3-15-02)

**04. Calculation.** Determine the number of taxable miles driven in Idaho following the procedure established in Subsection 290.01 of these rules. Divide this number by the actual MPG, the presumed MPG established by Subsection 290.01 of these rules, or the industry standard MPG provided by Subsection 290.02 of these rules. Subtract this number of gallons from the total Idaho tax-paid gallons purchased for the subject vehicles. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of Sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. (~~3-30-07~~)( )

**05. Power Take-Off and Auxiliary Engine Allowances (Allowances).** Power-take-off (PTO) allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline-powered vehicles. (4-5-00)

**a. Standard Allowances for Special Fuels.** Nontaxable gallons of special fuels may be claimed when special fuels are used for purposes other than to operate, propel, or idle, as defined in Section 63-2401, Idaho Code, a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for allowances are turning a vehicle-mounted cement mixer or off-loading product. (4-6-05)

**b. Standard Allowances for Gasoline.** Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the registered motor vehicle. No claim for gasoline is allowed when gasoline is used by the registered motor vehicle’s main engine even to operate the motor vehicle’s PTO unit. (3-30-07)

**c. Rates for Standard Allowances.** The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (4-5-00)

i. Allowances based on unit quantities:

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled



Allowance Type	Allowance Rates	x	Unit Quantities
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
Concrete Pumping	0.142857 gallons	x	Yards pumped

(4-11-06)

- ii. Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage compaction	25%	x	Gallons consumed

(3-15-02)

**06. Nonstandard Allowances.** A request for an allowance not listed in Subsection 292.05 of this rule, or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to:

FUELS TAX POLICY  
IDAHO STATE TAX COMMISSION  
P. O. BOX 36  
BOISE, ID 83722-0410

The Idaho State Tax Commission may request additional information or documentation as needed in order to make a determination on the request. (4-6-05)

**07. Nontaxable Gallons of Fuel Claimed by Non-IFTA Licensees.** The nontaxable gallons of fuel claimed by non-IFTA licensees may be the allowance gallons listed in Subsections 292.05 and 292.06 of this rule and/or the gallons calculated under Subsection 292.04 of this rule. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 290.01 of these rules by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to mileage and fuel consumption (MPG) information. (4-11-06)

**08. IFTA Licensees.** Qualifying for Power Take-Off (PTO) And Auxiliary Engine Allowances (Allowances). Allowances listed in Subsection 292.05 of this rule or established as provided in Subsection 292.06 of this rule may be granted for IFTA licensees by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.05 and 292.06 of this rule, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet. (4-6-05)

**a.** The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons determined by the allowances in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. (4-5-00)

**b.** Additionally, a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee. (4-5-00)

**c.** IFTA licensees that used an assumed MPG when preparing their original IFTA return may not claim any additional refund. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**510. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (RULE 510).**

**01. Application.** (6-23-94)

**a.** The Petroleum Transfer Fee applies to the receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$0.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. (7-1-99)

**b.** The legal incident of the fee is on the distributor required to report it to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94)

**02. Receipt of Petroleum Products.** Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. (7-1-99)

**03. Exemption to Application of the Transfer Fee.** The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

**a.** Returned to the refinery or pipeline terminal. (6-23-94)

**b.** Exported from this state. No fuel will be considered exported, unless the

distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. (7-1-99)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

**04. Casualty Loss and Shrinkage Not Deductible.** All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. The deductions allowed to motor fuel distributors for fuel lost by fire or similar casualty, see Section 63-2407(3), Idaho Code; and the two percent (2%) discount for ~~cost of collection and~~ loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; are not deductions applicable to the Petroleum Transfer Fee. (7-1-99)( )

**05. Petroleum and Petroleum Products.** The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as ~~gasohol~~ E-10 and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), ~~biodiesel~~, biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. (4-11-06)( )

**06. Licensed Distributors and Limited Licenses.** Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

**07. Reporting Requirements.** (6-23-94)

a. Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report

the tax on the same fuel. (5-3-03)

**b.** Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

**c.** The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

**08. Payment.** (6-23-94)

**a.** Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

**b.** Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

**09. Incorporation of Other Relevant Rules.** Section 41-4909, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (4-6-05)

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0105-0702**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 63-105, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, pages 365 through 367.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Randy Nilson at (208) 334-7530.

DATED this 1st day of November, 2007.

Randy Nilson  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 170:** Is being amended to be consistent with the passage of House Bill 249A, and to show that the special fuels tax is included in the price of undyed diesel fuel purchased by a consumer, and to reflect the EPA's changes to the allowable sulfur content in on-road and off-road diesel fuel. Remove all references to high-sulfur diesel fuel and add ultra-low sulfur diesel fuel.

**Rule 250:** is being amended to add a new paragraph to address a recent Idaho Supreme Court observation concerning refund claims. The court said that there are basically two issues to be resolved in a tax refund case: (1) whether there is any basis for asserting a right to a refund, and (2) the amount of the refund. Add the language above to a new Section 250.01 of this rule.

**Rule 501:** is being amended to be consistent with the law due to the passage of House Bill 99, to give notice to fuel distributors that the transfer fee will be reinstated and to Provide legal requirement for reinstatement and the date for reinstatement when set.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24,

2007.

DATED this 17th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**170. ADDITIONAL INFORMATION (RULE 170).**

**01. Undyed Diesel Fuel Used for Heating Purposes.** The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes ~~paid~~ included in the purchase price on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: ~~(7-1-98)~~(\_\_\_\_)

a. Properly documenting information on the sales invoice; and (7-1-98)

b. Providing the customer with a Form 75-HF "Heating Fuel Only." (7-1-98)

**02. Red-Dyed ~~High~~ Low-Sulfur and Ultra Low-Sulfur Fuel.** It is illegal to use red-dyed ~~high~~ low-sulfur and ultra low-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state unless the type of user is listed in Subsection 101.03 of this rule. ~~(7-1-98)~~(\_\_\_\_)

**03. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel.** The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur and ultra low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur and ultra low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur and ultra low-sulfur diesel fuel may be used: ~~(4-11-06)~~(\_\_\_\_)

a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)

b. In the engine of a train; (7-1-98)

c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)

d. In a vehicle (such as a ground servicing vehicle for aircraft) owned by an aircraft museum; (4-11-06)

e. In a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any state or foreign country and is used in the operator's trade or

business or for the production of income; (4-11-06)

f. In a highway vehicle owned by the United States that is not used on a highway; (4-11-06)

g. Exclusively by a nonprofit educational organization as defined in Internal Revenue Code Section 4221 (d)(5). (4-11-06)

**04. Motor Fuels Exemption From Sales Tax.** Any sale of motor fuels by any fuel distributor which is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If fuel, including dyed diesel fuel, is sold without the motor fuels tax, the sale is subject to Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of fuel delivered into bulk storage tanks, where the motor fuels tax is not charged, are exempt from Idaho sales tax only if the distributor has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 128. However, if the fuel delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. REFUND CLAIMS -- REPORTING (RULE 250).**

**01. Requirements of a Valid Refund Claim.** Before the Tax Commission can credit or refund motor fuels taxes, the taxpayer making the claim must establish both of the following: ( )

**a.** The basis for the credit or refund claim, and ( )

**b.** The amount of the credit or refund. ( )

**02. Refund Claim.** Consumers claiming refunds of motor fuels taxes may file the claim together with their Idaho income tax return in the manner required for gasoline tax refunds, under Section 63-2410, Idaho Code, or in the case of claimants not required to file an income tax return, in the manner required by Section 63-2410(5)(b), Idaho Code. (7-1-98)

**023. Minimum Filing Period for Refund Claims.** Any taxpayer entitled to a refund of motor fuels taxes may file a refund claim which covers a time period of not less than one (1) month. (7-1-98)

**034. Refund May Be Claimed Only by Final Consumer.** Refunds of motor fuels taxes may be claimed on Form 75 by the person who purchased and used the motor fuels upon which the tax has been paid and for which a refund may be claimed. In the case of all partnerships and any corporations filing Idaho Form 41S, relating to S Corporations, any refund of motor fuels taxes paid by the partnership or S Corporation must be claimed by the partnership or corporation. The refund may not be applied to the individual returns filed by partners or shareholders.



(7-1-98)

**045. Statute of Limitations.** For limitations of time for consumers to file refund claims for motor fuels taxes, see Section 63-2410(5)(c), Idaho Code. (5-3-03)

**056. Refund May Be Filed Separately.** Refunds of motor fuels taxes are claimed using Form 75 and must be filed by the final purchaser and user of the motor fuels in conjunction with that person's Idaho income tax return or separately as a stand-alone refund claim. (7-1-98)

**067. Refund Applied to Taxes Due.** Any refund due to a consumer will be applied first to any liability due under any law administered by the State Tax Commission, including any liability under IFTA, which is due and unpaid at the time the claim is filed. In addition, no refund will be paid if the claimant has failed to file any tax return required to be filed with the State Tax Commission. Any balance of the refund exceeding taxes due shall be paid as a refund to the entity filing the return. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. PETROLEUM TRANSFER FEE ~~SUSPENDED~~ REINSTATED (RULE 501).**

The Petroleum Transfer Fee was suspended as of October 1, 1999. Imposition of the Petroleum Transfer Fee ~~may be~~ was reinstated on September 1, 2007, pursuant to Section 41-4909(10), Idaho Code. ~~Unpaid petroleum transfer fees imposed for periods before October 1, 1999, are still due and may be subject to audit, assessment and collection.~~ (4-6-05)(\_\_\_\_)

# **IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

## **39.02.60 - RULES GOVERNING LICENSE PLATE PROVISIONS**

**DOCKET NO. 39-0260-0701**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-201, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**With the implementation of the digital license plate program, this provides for the increase in character capacity from 5 to 6 for specialty plates; provides for the extension of a temporary registration to 45 days to allow for the manufacture and delivery of the new plate; and allows licensed vehicle dealers to use loaner plates on vehicles in their inventory while they are on loan for civic or charitable events for up to 30 days.**

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, pages 406 through 415.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129  
Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Immediate implementation of the digital license plate program requires changes to provide service to our customers. The new program increases the character capacity from 5 to 6, but may take up to 45 days for the manufacture and delivery of a specialty plate. The rulemaking provides for the extension of a temporary registration to 45 days for the manufacture and delivery of the new plate. The rulemaking also responds to an industry request to allow licensed vehicle dealers to use loaner plates on vehicles in their inventory while they are on loan for civic or charitable events for up to 30 days.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The rulemaking provides customer benefits associated with the digital license plate program which will become effective shortly. It also contains a provision for licensed dealers to make vehicles available for civic or charitable events.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because a portion of the rulemaking is associated with a new digital plate program,

and the Department and the various licensed dealers engaged in informal negotiations to reach a decision regarding the use of dealer loaner plates on vehicles used for civic or charitable events.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED the 24th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**001. TITLE AND SCOPE.**

*This rule specifies license plate provisions for standard license plates not otherwise detailed in Title 49, Idaho Code, and provisions for the following special license plates: centennial, disabled veteran, former prisoner of war, handicapped, legislative, personalized, vehicle dealer, year of manufacture, and sample.* (1-3-92)

**01. Title.** These rules shall be cited as IDAPA 39.02.60 “Rules Governing License Plate Provisions.” ( )

**02. Scope.** This rule governs license plate provisions for standard license plates not otherwise detailed in Title 49, Idaho Code, and provisions for all specialty program license plates, personalized plates, and special eligibility plates. ( )

**002. WRITTEN INTERPRETATIONS.**

This agency does not rely on written interpretations for these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of IDAPA 04.11.01. “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID

83707-1129. ( )

**02. Office Hours.** Daily office hours at 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8649 or by fax at 208-334-8542. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )

**0027. -- 009. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. LICENSE PLATE PROVISIONS FOR ALL LICENSE PLATES.**

The Idaho Transportation Department is authorized to assign unique plate letter/number spacing schemes and to use specific letter/number combination schemes as needed for the purpose of ensuring unique numbering systems for all license plate programs and to administer the provisions of this rule. ( )

**012. TEMPORARY REGISTRATION FOR NEW, REPLACEMENT, OR REISSUED LICENSE PLATES.**

**01. Temporary Registration.** Upon receipt of payment for required registration and program fees, a forty-five (45) day temporary registration may be issued, indicating "license plates on order." This option will be used whenever license plates are required to be manufactured after the registration transaction has been completed. The temporary registration shall provide proof that the vehicle has been registered and fees have been paid, and the vehicle may be operated until new plates have been received by the registrant. At the discretion of the department, more than one (1) forty-five (45) day temporary registration may be issued, if needed, in order to manufacture license plates. ( )

**02. Placement of Temporary Registration Document.** The forty-five (45) day temporary registration document shall be displayed in the rear window of the vehicle for which it is issued. When issued to a convertible, motorcycle, or other vehicle in which it is not possible to display in the rear window, the temporary registration must be conspicuously displayed where the number and expiration date of the permit may be easily read, and where it is protected from exposure to weather conditions, which would render it illegible. ( )

**0143. -- 099. (RESERVED).**

**100. LICENSE PLATE PROVISIONS FOR STANDARD PLATES.**

**01. County Designations.** The county in which a vehicle is registered will be designated by a number and letter on license plates for passenger cars, pick-up trucks eight thousand (8,000) pounds and under gross weight, hearses, ambulances, wreckers, farm vehicles between eight thousand one (8,001) and sixty thousand (60,000) pounds gross weight, and recreational trailers. The county designators are as follows:

1A - Ada	2A - Adams	1B - Bannock	2B - Bear Lake
3B - Benewah	4B - Bingham	5B - Blaine	6B - Boise
7B - Bonner	8B - Bonneville	9B - Boundary	10B - Butte
1C - Camas	2C - Canyon	3C - Caribou	4C - Cassia
5C - Clark	6C - Clearwater	7C - Custer	E - Elmore
1F - Franklin	2F - Fremont	1G - Gem	2G - Gooding
I - Idaho	1J - Jefferson	2J - Jerome	K - Kootenai
1L - Latah	2L - Lemhi	3L - Lewis	4L - Lincoln
1M - Madison	2M - Minidoka	N - Nez Perce	1O - Oneida
2O - Owyhee	1P - Payette	2P - Power	S - Shoshone
1T - Teton	2T - Twin Falls	V - Valley	W - Washington

(1-3-92)

**02. Designation for Farm Vehicles.** License plates for farm vehicles between eight thousand one (8,001) and sixty thousand (60,000) pounds gross weight will have the ~~letter "T"~~ following the serial number and a county designator, then a unique serial number followed by the letter "T".  
(1-3-92)( )

**03. Designation for Recreational Vehicles.** License plates for recreational trailers will have the ~~letter "R"~~ following the serial number and a county designator, then a unique serial number followed by the letter "R".  
(1-8-90)( )

**04. Designations for Motor Homes.** License plates for motor homes will have the ~~letter "M"~~ following the serial number and a county designator, then a unique serial number followed by the letter "M".  
(1-3-92)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**151. VEHICLE DEALER LICENSE PLATES RESTRICTIONS.**

**01. Restrictions.** Restrictions on the use of manufacturer or dealer plates are provided for by Section 49-1627, Idaho Code. In addition, the following restrictions shall apply: (1-3-92)

**a.** Authorized employees may operate vehicles displaying dealer plates only when operated in the furtherance of the dealer's business. The authorized employee must carry an

identification card issued by the dealer. The identification card shall contain the employee name, dealership, date of issue, dealer number and signature of an authorized representative of the dealership and the signature of the employee. This use shall be limited to normal business hours unless the operator is in possession of a letter from the dealer listing the specific reason for the after-hour use. (1-3-92)

**b.** A manufacturer shall not display manufacturer plates on vehicle types other than those manufactured by the manufacturer. (1-8-90)

**c.** A new or used motorcycle, or all-terrain vehicle ~~or snowmobile~~ dealer shall not display motorcycle dealer plates on other vehicle types or on a new motorcycle, or all-terrain vehicle ~~or snowmobile~~ that the dealer is not enfranchised to sell. (1-3-92)( )

~~**d.** A trailer dealer shall not display trailer dealer plates on other vehicle types.~~ (1-8-90)

**ed.** A new vehicle dealer shall not display new vehicle dealer plates on new vehicles that the dealer is not enfranchised to sell. (1-8-90)( )

**fe.** A prospective purchaser shall not have in his possession a vehicle belonging to a dealership after normal business hours without a letter of authority from the dealership. (1-8-90)( )

**gf.** A dealer or manufacturer shall not display a dealer plate for purposes other than provided for by law or regulation. (1-8-90)( )

**02. Penalties.** In addition to the penalties for violation of plate use provided for in Section 49-236, Idaho Code, a dealer or manufacturer may have his license to do business in Idaho suspended for a period not less than fifteen (15) days nor more than thirty (30) days. (1-8-90)

## **152. VEHICLE DEALER LOANER PLATES.**

**01. Numbering.** Plates shall be numbered from LAA001 to LZZ999. (1-03-93)

**02. Surrender of Plates.** If the dealership license becomes invalid, the dealer must surrender the registration and loaner plates that have been issued. There shall be no refund of fees. (1-8-90)

**03. Vehicle Log.** Dealerships shall maintain a vehicle log of each vehicle on which a loaner plate is displayed. The log shall be available for inspection by any peace officer or agent of the Department and shall contain the: (1-8-90)

**a.** Vehicle Identification Number (VIN) or dealership stock number if such stock number can be traced to the vehicle's VIN; (1-8-90)

**b.** Date(s) the plates were displayed on a vehicle; (1-8-90)

- c. Number ~~embossed~~ printed on the plate displayed; ~~(1-8-90)~~(\_\_\_\_)
- d. Name of person authorized to use the plate; and (1-8-90)
- e. Purpose for which vehicle was used. (1-8-90)

**04. Identification Card.** The Department shall provide an identification card, (registration) for each plate. The registration shall show the: ~~(1-8-90)~~(\_\_\_\_)

- a. Dealership name and address; (1-8-90)
- b. Number ~~embossed~~ printed on the plate; ~~(1-8-90)~~(\_\_\_\_)
- c. Calendar year for which the registration is valid; (1-8-90)
- d. Dealer number; (1-8-90)
- e. Date of issue; and (1-8-90)
- f. A place for the dealer's signature. (1-8-90)

**05. Letter of Authorization.** Persons using the plate on loaner vehicles while waiting for their own vehicle to be repaired shall have in their possession a letter of authorization or a document showing both the user and dealership name. The document letter must be signed and dated by an authorized employee of the dealership. (1-3-92)

**06. Vehicle Use Donation for Civic and Charitable Events.** Licensed dealers may authorize the use of their loaner plates when donating the use of vehicles held in their inventory for civic or charitable events. Such time period shall not exceed thirty (30) days. The dealer shall provide a letter of authorization to be carried in the vehicle and proof of current liability insurance, as required by Chapter 12, Title 49, Idaho Code. (\_\_\_\_)

**067. User Fee.** The dealer may charge the user a fee for vehicles held in stock for sale and provided to a customer of a dealership while the customer's vehicle is being repaired. (1-3-92)

**078. Fees.** The fees charged for dealer loaner plates shall be the same as the fees required by Section 49-402, Idaho Code, for new vehicles, and shall be in addition to the current Emergency Medical Service (EMS) and plate fees. Applicants for new loaner plates received after January 1 shall be charged one-twelfth (1/12) the annual fee required for a new vehicle for each month remaining in the licensing year, including the month of application. The annual EMS and plate fees are not prorated. (1-3-92)

### **153. VEHICLE DEALER TRANSPORTER REGISTRATION AND PLATE.**

**01. Purpose.** ~~Unladen~~ Utility and boat trailers that weigh under two thousand (2,000) pounds unladen may be moved by a manufacturer, ~~transporter~~, dealer, or an employee ~~for demonstration purposes only~~ of either, or by a transporter service contracted by the vehicle's



manufacturer or dealer upon registration and payment of an annual fifteen dollar (\$15) transporter plate fee to the ~~D~~department's ~~Dealer Operations Unit~~, or by purchase of a single trip permit. These plates may be used only on boat trailers and utility trailers for demonstration purposes, and may be used while laden for demonstration purposes. ~~(1-3-92)~~( )

**02. Numbering of Plates.** Transporter plates shall be numbered from PA1 TO PZ9999. Transporter plates are required to be displayed on the rear of the trailer. (1-3-92)

**03. Renewal of Plates.** The transporter registration and plate are valid for one (1) year from January 1 through December 31 and may be renewed by use of a registration sticker showing the year of validation. (1-8-90)

**04. Use of Plates.** Transporter plates may be moved by registrants from one (1) ~~unladen~~ utility or boat trailer weighing under two thousand (2,000) pounds unladen to another trailer meeting this criteria during the ~~validation~~ current registration period. Vehicles towing a laden trailer displaying a transporter plate must be registered within the appropriate gross vehicle weight category for the combined load. ~~(1-8-90)~~( )

**05. Possession of Registration.** When transporting a vehicle displaying a transporter plate, the operator of a towing vehicle shall carry the transporter registration in the towing vehicle at all times. (1-8-90)

**06. Violations.** Violations of this section include: (1-3-92)

**a.** Display of a transporter plate on any vehicle not required to be registered under this Section; and (1-3-92)

**b.** Display of a transporter plate on a vehicle not lawfully under the control of the registration holder. (1-3-92)

**07. Penalties:** (1-8-90)

**a.** Violation of this section shall be a misdemeanor as provided for by Section 49-236, Idaho Code; and (1-8-90)

**b.** The plate and registration of anyone who displays a transporter plate other than provided for by this section may be canceled. (1-8-90)

**154. -- 1998. (RESERVED).**

**199. LICENSE PLATE PROVISIONS FOR SPECIAL PROGRAM AND PERSONALIZED PLATES FOR TRAILERS.**

Special program and personalized plates may be issued to trailers manufactured primarily for recreational vehicle uses. Such trailers will include camper, tent or fifth-wheel recreational trailers. Trailers with multiple uses such as utility, horse, or boat, with or without recreational vehicle facilities, shall be excluded. ( )

**200. LICENSE PLATE PROVISIONS FOR SPECIAL PLATES.**

**01. Year of Manufacture Plates.** (1-3-92)

a. Owners of vehicles ~~thirty (30) or more years old~~ manufactured up through 1974, excluding model years 1969, 1971, 1972, and 1973, but including and ending with model year 1974, may apply for the renewal and use of previously canceled Idaho license plates which were originally issued to the same category of vehicle, where the year designation of the plate matches the year of manufacture of a motor vehicle. (1-3-92)( )

b. The license plate must be in serviceable condition as originally manufactured, i.e., must not be marred, bent, faded, or otherwise damaged to the point it is illegible. If the plate is repainted to bring it to a serviceable condition, the colors shall match the original colors as closely as possible. The quality of the repaint must equal or exceed the original quality. The plate cannot be a duplicate of a previously manufactured plate still in use. (1-3-92)( )

c. The application for use of the plate shall include a statement signed by the applicant attesting that the applicant understands, if the plate use is approved, the plate does not have reflectorized material which meets the requirements of Section 49-443, Idaho Code. The responsibility for any accident or injury arising out of the possible consequence of not having this reflectorized safety feature on the license plate shall be borne by the registrant. (1-3-92)

d. The license plate number sequence applied for cannot duplicate another existing "year of manufacture" license plate number already in use. ~~However, the applicant may be provided with a motor vehicle record of the current plate owner for a record inquiry fee, if desired. Contact with the current plate owner will be the responsibility of the applicant. If the applicant is successful in negotiating for the removal of the current plate, the current owner must turn in the plate for cancellation at a county assessor's office and pay the fees due to secure another plate. The antique plate cannot be registered until the current plate is canceled.~~ (1-3-92)( )

e. "Classic" or "Old Timer" plates may be used in conjunction with this revived plate at the option of the registrant. (1-3-92)

**02. Centennial License Plates.** Personalized, ~~handicapped~~ and regular number plates are available in the centennial format. (1-3-92)( )

**03. Disabled Veteran License Plates.** Disabled veteran license plates ~~shall~~ may, upon the registrant's request, display the international handicapped symbol to ensure reciprocal parking privileges in all states and provinces. (1-3-92)( )

**201. ~~PREVIOUS~~ PROVISIONS FOR LEGISLATIVE LICENSE PLATES.**

**01. Option to Apply.** Members of the Idaho Legislature have the option of applying to the Department's Special Plates Unit for one (1) set of specially numbered license plates bearing the designation "HOUSE" or "SENATE." (1-3-92)

**02. Numbering Assignment List.** On or before June 15 each year, the Department will request from the Speaker and Pro Tem a current list of license numbers assigned to all

legislators. The Department will request that these lists be returned by September 1 or, in an election year, within fifteen (15) days after the election. (1-3-92)

**03. Plate Availability.** Upon receipt of the lists, the Department will ensure that a complete set of special legislative license plates is available for each legislator. (1-3-92)

## **202. PROVISIONS FOR PERSONALIZED LICENSE PLATES.**

**01. Special Characters or Marks.** No special characters, or punctuation marks, may be used for personalized messages on license plates. (1-3-92)

**a.** Up to seven (7) letters or any combination of seven (7) letters and numbers may be used for personalized messages on ~~passenger car~~ eligible six inch by twelve inch (6" x 12") license plates. (1-3-92)( )

**b.** Up to six (6) letters or any combination of six (6) letters and numbers and spaces may be used for personalized messages on motorcycle plates. (1-3-92)( )

**c.** Up to six (6) letters or any combination of six (6) letters and numbers and spaces may be used for personalized messages on specialty program license plates. ( )

**ed.** Handicapped Disability six inch by twelve inch (6" x 12") plates will display the international handicapped symbol followed by up to five (5) letters, ~~and~~ numbers, and spaces in the personalized message. Disability four inch by seven inch (4" x 7" (motorcycle)) plates will display the international handicapped symbol followed by up to four (4) letters, numbers, and spaces in the personalized message. (1-3-92)( )

**02. Issue of Personalized Plates.** Personalized plates can be issued only to vehicles if no specific wording is required on the plate to identify the purpose for which the vehicle is registered. Personalized plates will not be issued if such plates would jeopardize the integrity of unique plate identification requirements. Examples include but are not limited to: (1-3-92)

**a.** Commercial vehicles registered under the International Registration Plan (IRP), because the designators PRP are required to be printed on the plate; (1-3-92)

**b.** Vehicles for which the designators "~~COMM~~" or "~~LTD~~" "PRP" are required to be printed on the plate to identify the use; and (1-3-92)( )

**c.** Utility, horse, or enclosed car hauling trailers with RV facilities or boat trailers. (1-3-92)( )

**03. Specific Requests.** Requests for specific plate letters and/or numbers will be issued on a first come, first served basis. In the event of a request for the same plate by more than one (1) individual, the request with the earliest postmark, e-mail transmission time, or fax transmission time will prevail. If the postmarks are the same, the date stamped upon arrival at the Department will prevail. Applications submitted at county assessors' offices will not be considered valid until stamped in by the Department. Telephone requests will not be accepted. (1-3-92)( )

**04. Lack of Current Plates.** When an applicant for personalized plates does not have current regular number plates: (1-3-92)

**a.** The Department may issue a thirty (30) day temporary registration to allow time for the ~~manufacture of~~ billing process for personalized plates. ~~A second thirty (30) day temporary registration may be issued if needed.~~ The fee for each thirty (30) day temporary registration shall be as required by Section 49-523, Idaho Code. (1-3-92)( )

**b.** The Department may, upon payment of all required fees, issue a ~~copy of the application and receipt to the applicant for display in place of the thirty (30) day temporary.~~ See ~~Section 49-429, Idaho Code~~ temporary registration document as provided in Section 012 of these rules. (1-3-92)( )

**05. Credits.** When personalized plates are issued before an applicant's current registration is expired, credit will be given for unexpired registration fees only. (1-3-92)

**06. Renewing Plates.** The applicant will have the choice of renewing existing personalized plates with validation stickers or ordering a new set of plates at the time of renewal. If new plates are requested, the plate fee will be charged in addition to all other fees that are due. New plates must be purchased ~~in the year of general reissue~~ every seven (7) years as provided in Section 49-443, Idaho Code. (1-3-92)( )

**07. Transfer of Plates.** When personalized plates are issued, the vehicle's regular number plates may be transferred to another vehicle belonging to the owner. If registration credit is given from the regular number plates to the personalized, the regular number plate registration is canceled. (1-3-92)

**08. Acceptability of Plates Message.** Acceptability of the personalized license plate message and issuance, denial or cancellation will be determined by the Department based on the following criteria: (1-3-92)

**a.** The combination of numbers and letters requested or combinations of same may not duplicate an existing combination in use. (1-3-92)

**b.** The message, in any language, may not carry a sexual connotation nor consist of a term that is considered to be one of: obscenity; contempt; prejudice; hostility; insult; racial degradation; ethnical degradation; profanity; or vulgarity as defined in dictionaries of general use, including, but not limited to, Webster's Unabridged Dictionary and the Harper & Row New Dictionary of American Slang. (1-8-90)( )

**c.** The criteria in ~~Subsection Paragraph~~ 202.08.b. ~~above~~ of these rules is not to be considered an exhaustive list. A compilation of offensive or obscene words, terms or letter/number combinations gathered from the experience of Idaho and other states may also be used as a guide. (1-3-92)( )

**d.** When a complaint is received from the public concerning an issued plate, the name of the caller will not be recorded nor, if known, revealed. (1-3-92)

e. Final determination regarding applications for questionable messages or cancellation of issued plates will be made by the Division of Motor Vehicles ~~Bureau~~. The determination process shall include a first review by technical staff, followed by a second review by supervisory and management staff. An applicant does, however, have a right to a hearing on the decision. (1-3-92)( )

**09. Message Preferences.** Applicants may submit three (3) message preferences including the specific meaning of each. The first choice that is available and acceptable will be issued. If none of the preferences are available or acceptable, the applicant will be notified by return mail. (1-39-92)( )

**10. Recalled Plates.** Personalized plates may be recalled by the Department for the following reasons: (1-3-92)

a. Error in manufacturing; or (1-3-92)

b. Clerical error. (1-3-92)

c. Unacceptable personalized messages as outlined in Subsection Paragraph 202.08.b. of these rules. (1-3-92)( )

**11. Unexpired Fees.** If a set of personalized plates is recalled, the ~~twenty-five dollars (\$25)~~ personalized plate program fee, unexpired portion of the registration fee, E.M.S. fee, plate fee, (if plates are returned to the department), and ~~centennial fee~~ all other applicable special plate fees, if applicable, will be refunded or transferred to a new issue of personalized plates. (1-3-92)( )

**12. Expired Plates.** Personalized plates that are allowed to expire shall become immediately available for reissue to another applicant. There is no grace period. (1-3-92)

## **203. PROVISIONS FOR FORMER PRISONER OF WAR (POW) LICENSE PLATES.**

**01. Eligible Person.** Any veteran who was a prisoner of war (POW) of an armed enemy of the United States during active service in the armed forces of the United States during the following recognized war periods may be eligible:

WORLD WAR I	April 6, 1917 to November 11, 1918
WORLD WAR II	December 7, 1941 to December 31, 1946
KOREAN WAR	June 27, 1950 to January 31, 1955
VIETNAM WAR	August 5, 1964 to May 7, 1975
USS PUEBLO	January 23, 1968 to December 23, 1968
<del>DESERT STORM</del> <del>PERSIAN GULF</del>	August 2, 1990 (Congress has not assigned an ending date.)

(1-3-92)( )

**02. Certified Documentation.** Eligibility shall be documented by a copy of the applicant's 53.55 or DD-214 Separation from Active Duty papers, or other specific documentation received from the Veterans Administration that certifies that the applicant was a prisoner of war during the recognized war periods stated above. (1-3-92)

**204. -- 299. (RESERVED).**

**300. PROVISIONS FOR SAMPLE PLATES.**

Sample plates are issued at twelve dollar (\$12) per plate on the "Scenic Idaho/Famous Potatoes" red, white, and blue plate as follows: (1-3-92)

**01. Plate Size.** Plates carrying the word SAMPLE in both passenger car size (six inches by twelve inches (6" x 12")) and motorcycle size (four inches by seven inches (4" x 7")). (1-3-92)

**02. Personalized Sample Plates.** Personalized Sample plates are issued on both plate sizes, passenger car with maximum of seven (7) characters and motorcycle size with a maximum of six (6). (1-3-92)

**a.** The applicant completes an Application for Personalized Sample License Plates, Form ~~ITD-3684~~. (1-3-92)( )

**b.** The acceptability screening process used is the same as that used for regular personalized plate application. (1-3-92)

**c.** The Department shall adopt written policy for the issuance of duplicate and replacement sample plates with personalized character combinations. (1-3-92)

**d.** The department may include other special license plate programs for sample plate sale, when not prohibited by code, or that would not cause a compromise of a special eligibility plate program. ( )

**03. Penalties.** There is a penalty for fictitious display of sample plates (Section 49-456, Idaho Code). (1-3-92)

## **IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

### **39.02.75 - RULES GOVERNING NAMES ON DRIVERS' LICENSES AND IDENTIFICATION CARDS**

**DOCKET NO. 39-0275-0701**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-201, 49-306, 49-314, 49-315, 49-318, 49-319, 49-336, and 49-2443, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**This rulemaking will provide more flexibility in naming standards on driver's licenses and identification cards, by allowing apostrophes in names and allowing a married couple to use the same hyphenated last name.**

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, pages 416 through 419.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ed Pemble, Driver Services Manager, 332-7830.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129  
Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **July 1, 2007**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 49-201, 49-306, 49-314, 49-315, 49-318, 49-319, 49-336, and 49-2443, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**This rulemaking will provide more flexibility in naming standards on driver's licenses and identification cards, by allowing apostrophes in names and allowing a married couple to use the same hyphenated last name. These are appropriate and requested options.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**This rulemaking confers a benefit on the citizens of the state and responds to their requests.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action is in response to reasonable and appropriate requests by the public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Ed Pemble, Driver Services Manager, 332-7830.



Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**000. LEGAL AUTHORITY.**

Under the authority of Sections 49-201, 49-306, 49-314, 49-315, 49-318, 49-319, 49-336, and 49-2443, Idaho Code, the Department adopts the following rule. (5-13-91)

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be known as IDAPA 39.02.75 "Rules Governing Names on Drivers' Licenses and Identification Cards," IDAPA 39, Title 02, Chapter 75. ( )

**02. Scope.** The purpose of this rule is to provide procedures and criteria for County Sheriffs and the Idaho Transportation Department to record and format names, and to allow surnames and hyphenated names on drivers' licenses and identification cards. ~~(5-13-91)~~( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**005. OFFICE - OFFICE HOURS - MAILING AND STREET ADDRESS - PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone and FAX numbers.** The central office may be contacted during office hours by phone at 208-334-8735 or by fax at 208-334-8739. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )

**0027. -- 099. (RESERVED).**

**100. GENERAL PROVISIONS.**

**01. Punctuation Marks.** The only punctuation marks which may be used in a name are the comma (,), apostrophe ('), and the hyphen (-). A hyphen is allowed in the last name only, and may occur once. A comma can only be used between the last name and the first name. (5-13-91)( )

**02. Full Name Requirements.** Only twenty-six (26) characters, including the spaces and punctuation, can be used in the entire full name on the actual driver's license or identification card. If a full name has more than twenty-six (26) characters, the last name and first name must be written out fully. The middle name can be initialized and then the full middle name entered on the comment line of the application. If there is a designator, it will follow the middle initial. If the name is still more than twenty-six (26) characters, the first and middle names can be initialized and the full first and middle names entered on the comment line of the application. (5-13-91)

**101. -- 199. (RESERVED).**

**200. CRITERIA.**

**01. Legal Name.** The name on the birth certificate will be used unless a name changes due to: (5-13-91)

- a.** Marriage; (5-13-91)
- b.** Divorce; or (5-13-91)
- c.** Court Order. (5-13-91)

**02. Stepparents' Name.** Applicants are not allowed to use their stepparents' last name, except by court order or other documents may be accepted to change a name, on approval by the Idaho Transportation Department. (7-1-96)

**03. Drivers License and Identification Card Names.** The name printed on the driver's license or identification card will be maintained in the Idaho Transportation Department records in the following order: (1) Last name, (2) First name, (3) Middle name, (4) Designator (if applicable (see Subsection 200.04)). (7-1-96)

**04. Designations of Names.** The designations of I, II, III, etc., will become first (1st), second (2nd), third (3rd), etc., and will appear after the middle name. The designators of JR and

SR (no periods allowed) will be permitted and will appear after the middle name. The JR and SR designators will be permitted only if there is proof that the other individual exists, by way of an original certified copy of a birth certificate. (7-1-96)

**05. Married Applicants' Names.** Married applicants are permitted to use the maiden name of ~~a~~ the woman or surname of ~~a~~ the man as ~~a~~ the last name, or as the middle name, or hyphenate both surnames to form the last name. When married applicants choose to use different hyphenated names or only one applicant chooses to hyphenate their name, Wwomen will hyphenate their last names as "maiden-married" ~~name. M~~ and men will hyphenate their last names as "surname-maiden" ~~name. M~~. Married applicants who choose to have the same hyphenated last name may hyphenate their name as either "maiden-married" or "surname-maiden".  
(5-13-91)( )

**06. Divorced Applicants' Names.** Divorced applicants who want to use their original surname, or a surname from a previous marriage, but do not have a divorce decree indicating the new name are allowed to submit the following documents to the County Sheriffs or the Idaho Transportation Department: (5-13-91)

- a. Original certified copy of the birth certificate showing the original surname; (7-1-96)
- b. Original certified copies of the marriage license and the divorce decree, as evidence to change the name; or (7-1-96)
- c. Original certified copies of the marriage license and divorce decree (only required for applicants wanting to use a surname from a former marriage). (7-1-96)

**07. Applicant's First Name.** Applicants are not allowed to change their first names except by court order. (5-13-91)

**08. Common Law Marriage.** Common law marriages created prior to January 1, 1996 will for the purposes of this rule be treated as a valid marriage. An affidavit of agreement is required which shall include: (7-1-96)

- a. The signatures of both the husband and the wife; (5-31-91)
- b. The date they became married under common law; and (5-13-91)
- c. Other documents verifying the marriage (subject to the approval of the Idaho Transportation Department). (5-13-91)

**09. Change of Name on Record.** Once names are established in the Idaho Transportation Department records, a court order, marriage license, or divorce decree will be required to change the name and record. (An original certified copy of the document, which is dated after the date of record, will be required.) (7-1-96)

**10. Titles or Nicknames.** Applicants are not allowed to use titles or nicknames. (7-1-96)

## **IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

### **39.03.08 - RULES GOVERNING PREQUALIFICATION OF VARIABLE LOAD SUSPENSION AXLES AND OTHER AUXILIARY AXLES**

**DOCKET NO. 39-0308-0701 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-1001, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The rulemaking repeals IDAPA 39.03.08, "Rules Governing Prequalification of Variable Load Suspension Axles and Other Auxiliary Axles," in compliance with Section 49-1001, Idaho Code, as amended by Senate Bill 1049, 2007, effective July 1, 2007, which has deleted provisions for pre-qualification of variable load suspension axles. The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, page 420.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 49-1001, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**This action repeals the Administrative Code, in compliance with Section 49-1001, Idaho Code, as amended by Senate Bill 1049, 2007, Session Law Chapter 65, effective July 1, 2007, which deleted provisions for pre-qualification of variable load suspension axles.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with Idaho Code.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action is a result of legislative action, amending Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

***IDAPA 39.03.08 IS BEING REPEALED IN ITS ENTIRETY.***

## **IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

### **39.03.10 - RULES GOVERNING WHEN AN OVERLEGAL PERMIT IS REQUIRED**

**DOCKET NO. 39-0310-0701**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-312 and 49-1001, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**This rulemaking will combine the permitting of emergency moves and secondary moves for wreckers removing disable vehicles and establishes a safer and more reasonable method of setting allowable weight limits on permitted vehicles by using the Department's Route Capacity Map, subject to posted weight restrictions.**

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, pages 421 through 424.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **August 1, 2007**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 40-312 and 49-1001, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**There is a need for a more efficient and economical method of permitting of wreckers removing disabled vehicles which is accomplished by combining the permitting of emergency moves and secondary moves. A safer and more reasonable method of setting allowable weight limits on permitted vehicles, while protecting our roads and bridges, is established by using the Department's Route Capacity Map, subject to posted weight restrictions.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**This rulemaking establishes a safer and more reasonable method of setting weight limits on permitted vehicles and also confers a benefit to wrecker owner/operators by reducing the number of required permits by combining emergency and secondary moves of disabled vehicles.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action both confers a benefit and improves the safety of the traveling public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W State Street with a mailing address of PO Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone and Fax Numbers.** The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )



**0027. -- 009. (RESERVED).**

**010. DEFINITIONS.**

Refer to ~~Rule~~ IDAPA 39.03.01, Rules Governing Definitions, for definitions of the terms used in this rule. ~~(10-2-89)~~(\_\_\_\_)

**011. -- 099. (RESERVED).**

**100. GENERAL.**

An overlegal permit, in writing, shall be required for any movement on any completed section of highway under the jurisdiction of the Department by any vehicle or vehicles with non-reducible loads which exceed the allowable weights or sizes established in Sections 49-1001, 49-1002 and 49-1010, Idaho Code. ~~(4-5-00)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. WAIVER OF LIMITATIONS FOR EMERGENCY MOVEMENTS.**

Notwithstanding other provisions of these rules, the Idaho Transportation Board may waive existing permit policy limitations in the event of an emergency, subject to such limitations or special requirements as the Board may impose. (8-25-94)

**01. Military Emergency Affecting National Security.** Any movement by or for a military or other government agency which is in excess of permit policy maximum limits of weight or size or which is otherwise outside established rules must be certified as a military necessity involving national security before receiving any special consideration to provide any waiver of normal permit rules. Certification of military necessity must be made by an official designated as having such authority by the Department of Defense Directory, issued by the Office of the Chief of Transportation, Department of Army. All applications for military emergency movements must be channeled through the Vehicle Size and Weight Specialist, Idaho Transportation Department. (8-25-94)

**02. Emergencies Endangering the Public Health, Safety or Welfare Including but Not Limited to Fire, Flood, or Earthquake.** During an emergency endangering the public health, safety or welfare, there may be an urgent and immediate need for equipment and it will not be in the public interest to require that a overlegal permit be in the vehicle prior to an over legal movement. Verbal approval to proceed without an overlegal permit in the vehicle may be obtained from the Overlegal Permit Office or an Idaho Port-of-Entry. Once the emergency movement is completed, formal application for an Overlegal Permit must be submitted to the Overlegal Permit Office. ~~(4-5-00)~~(\_\_\_\_)

**03. Emergency Movement of Implements of Husbandry.** It shall be considered an emergency when an implement of husbandry being operated on an official state holiday or a weekend (the Overlegal Permit Office is closed on weekends and holidays - for hours of Permit Office operation see IDAPA 39.03.09, "Rules Governing Overlegal Permits-General Conditions and Requirements") breaks down and needs to be taken to a dealer for immediate repair, or a

dealer brings replacement equipment to the farmer that exceeds the annual permit maximum width of fourteen (14) feet - six (6) inches. Verbal approval to proceed without an overlegal permit in the vehicle may be obtained from an Idaho Port of Entry. That verbal authorization will include escort vehicle requirements based on the route of travel and width of load. Once the emergency movement is completed, the permittee shall make formal application for a permit to the Overlegal Permit Office on the first working day after the occurrence. (4-5-00)( )

**04. Economic Emergencies.** When a circumstance occurs in which an economic hardship is expected to result due to the application of existing rules or limitations, the Transportation Board may consider a petition for the temporary waiver of those rules or limitations which are perceived as being the cause of such economic hardship. (8-25-94)

**05. Emergency Removal of Disabled Vehicles.** Annual Disabled Vehicle permits ~~or single trip permits~~ will be issued to heavy duty wrecker trucks or other vehicles used for the emergency removal and secondary movement of disabled trucks and/or trailers or combinations and their unladen return, subject to the following rules: (4-5-00)( )

**a.** The permitted vehicle involved in the removal of disabled vehicles shall have adequate weight and traction to control the combination of wrecker and attached vehicles, and shall provide brakes to the trailer axles and stop signal and clearance lights to such towed disabled vehicles. (12-26-90)

**b.** Loaded weight of the permitted vehicle's drive axle(s) will be permitted up to ~~twenty-five thousand (25,000) pounds/single and up to forty-three thousand (43,000) pounds/tandem axle~~ the basic allowable unit weight as shown on the current Idaho Transportation Department Route Capacity Map for the corresponding colored route, unless the highway route is posted with a weight restriction. The current Route Capacity Map is maintained by the Overlegal Permit Office and is available to the public from the Overlegal Permit Office and Idaho Ports of Entry. Length of the combination will be limited to the legal or permitted length of the disabled combination plus forty-five (45) feet. Width will be limited to ten (10) feet or to the permitted width of a permitted disabled over width vehicle/load. (8-25-94)( )

**c.** Time of travel restrictions shall be waived during the emergency movement of the disabled vehicles when necessary to clear the travel way. (10-2-89)( )

**d.** Emergency movement of disabled vehicles will be authorized from the point at which the vehicles were disabled to the nearest appropriate ~~commercial~~ site having facilities for ~~adequate repair services and cargo security~~ separation of vehicle combinations into single units unless by nature of the load it presents a hazard to the public (i.e: hazardous materials as defined by CFR 49) due to cargo security. In this event, the emergency movement shall be allowed to be transported to the nearest location where the cargo can be safely secured. Secondary movements of disabled vehicles that have been separated shall ~~not~~ be covered by the disabled vehicles permit as long as the weight/size limits as listed in Paragraph 300.05.b. of this rule are not exceeded. Secondary movements of disabled vehicles that are overwidth and moving at night shall be required to operate ~~by single trip permit in accordance with IDAPA 39.03.13, "Rules Governing Overweight Permits," and Rule 39.03.16, "Rules Governing Oversize Permits For Non-Reducible Vehicles and/or Loads," if allowed~~ in accordance with the lighting requirements as listed in IDAPA 39.03.12, "Rules Governing Safety Requirements of Overlegal Permits."

(4-5-00)(\_\_\_\_)

e. The permitted vehicle involved in the removal of a disabled vehicle shall be allowed (under annual disabled vehicle permit) to tow a non-disabled vehicle to the point of disablement, to replace the disabled vehicle. (4-5-00)

**06. Emergency Movements After Dark or Weekends.** Any overwidth load moving after dark or on weekends on a red coded route of the ~~P~~Pilot/~~E~~Escort ~~V~~Vehicle and Travel Time Requirements Map must be preceded by an escort vehicle displaying a rotating or flashing amber light to warn other traffic of the presence of the hazard. Any overwidth load moving after dark on black coded routes, if width exceeds ten (10) feet, must also be preceded by such a pilot/escort vehicle. All overwidth loads moved after dark shall have the extreme dimensions marked by lights as required by IDAPA 39.03.12, "Rules Governing Safety Requirements For Overlegal Permits." Self-propelled vehicles utilized to clear the travelway of snow or debris are exempt from the provisions listed in this Subsection. (4-5-00)(\_\_\_\_)

**301. -- 399. (RESERVED).**

**400. OVERLEGAL PERMITS FOR SELF PROPELLED VEHICLES.**

~~Permitted~~ ~~O~~verweight/oversize self propelled vocational vehicles (such as cranes, loaders, motor graders, drills) may tow any vehicle eight thousand (8,000) pounds or less when such vehicle is used solely for return trip after delivery of the permitted vehicle. (4-5-00)(\_\_\_\_)

## **IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

### **39.03.12 - RULES GOVERNING SAFETY REQUIREMENTS OF OVERLEGAL PERMITS**

**DOCKET NO. 39-0312-0701**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-312 and 49-1004, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**This rulemaking clarifies where the “oversize load” signs should be placed on towing vehicles and pilot/escort vehicles for maximum visibility by other travelers.**

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, pages 425 through 427.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **August 1, 2007**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 40-312 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Signs displayed by pilot/escort/towing vehicles are not always easily visible by other vehicles of the road. This rulemaking clarifies where the “oversize load” signs should be placed on towing vehicles and pilot/escort vehicles for maximum visibility by other travelers.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rulemaking improves the safety of the traveling public.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action provides for improved safety of the traveling public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street And Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone and Fax Numbers.** The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )

**0027. -- 009. (RESERVED).**

**010. DEFINITIONS.**

Refer to ~~Rule~~ IDAPA 39.03.01, "Rules Governing Definitions," for definitions of the terms used in this rule. (10-2-89)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. SIGNING REQUIREMENTS OF TOWING VEHICLES, OVERSIZE VEHICLES AND/OR LOADS.**

Oversize load signs shall meet the following specifications: (4-5-00)

**01. Dimensions.** Eighteen (18) inches high by seven (7) feet wide, letter height ten (10) inches, letter type standard series C, stroke width one and five-eighths (1 5/8) inch, black letters on yellow background. (4-5-00)

**02. Displaying Signs.** Signs shall be displayed on the front or the roof top of the towing vehicle and the rear of the oversize load. Shall be displayed on the front and back or the roof top of self propelled oversize vehicles. ~~(4-5-00)~~( )

**03. When Signs Are Required.** Oversize load signs shall be required on all vehicles and/or loads exceeding legal width. Signs shall not be displayed when the vehicle is empty and of legal dimensions. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. PILOT/ESCORT VEHICLE SIGN REQUIREMENTS.**

**01. Oversize Load Signs.** All pilot/escort vehicles while escorting and oversize load shall display a sign on the roof top of the vehicle having the words OVERSIZE LOAD. Such signs shall not be displayed and shall be considered illegal except when the pilot/escort vehicle is actually piloting/escorting an oversize load. ~~(4-5-00)~~( )

**02. Dimensions.** Ten (10) inches high by five (5) feet wide, type standard series B, eight (8) inch high letters, one (1) inch stroke width, and black letters on yellow background. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. CONVOY OF OVERLEGAL LOADS.**

**01. Convoying Oversize Loads.** Oversize loads which individually would require a pilot/escort vehicle, except overwidth manufactured homes, office trailers, may be permitted to travel in convoy with pilot/escort vehicles in front of and behind the convoy, but such convoys shall not exceed four (4) oversize loads or vehicles between pilot/escort vehicles. Maximum width of units in a convoy shall be limited to fourteen (14) feet six (6) inches on the interstate system or on black-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map and to twelve (12) feet six (6) inches on red-coded routes of the Pilot/Escort Vehicle and Travel

Time Requirements Map. Oversize loads which do not individually require a~~n~~ pilot/escort vehicle may travel in convoy without pilot/escort vehicles. Maximum length of units in a convoy shall be limited to one hundred (100) feet on red-coded and black-coded routes of the pilot/escort vehicle and travel time requirements map and one hundred twenty (120) feet on the interstate system.

(~~4-5-00~~)(      )

**02. Convoying Manufactured Homes, Office Trailers.** No convoy of overwidth manufactured homes ~~and~~ or office trailers shall include more than two (2) units and two (2) piloting/escorting vehicles. On those routes where pilot/escort vehicles are required in front and to the rear of an overwidth manufactured home ~~and~~ or office trailers, two (2) units may travel in convoy between such piloting/escorting vehicles. On routes requiring only a front pilot/escort vehicle, the manufactured home ~~and~~ or office trailers mover may have the option of convoying two (2) units between front and rear pilots/escorts. At no time shall more than one (1) manufactured home or office trailer be piloted/escorted by one (1) pilot/escort vehicle. Minimum spacing of approximately one thousand (1000) feet shall be maintained between all units in a convoy except when a~~n~~ pilot/escort is required to control traffic in turning movements.

(~~4-5-00~~)(      )



## **IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

### **39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS**

**DOCKET NO. 39-0316-0701**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-312 and 49-1004, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**This rulemaking clarifies that “combinations” hauling overwidth loads are double trailer combinations within the specified legal length limit.**

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, pages 428 and 429.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **August 1, 2007**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 40-312 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**This rulemaking provides clarification to industry on operational requirements by stating that “double trailer combinations” hauling overwidth loads may not exceed 75 feet in overall length. This will help protect against potential overstressing of our infrastructure and improve safety for the traveling public.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This action will protect the public safety and their investment in the state’s infrastructure.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action provides for improved safety of the traveling public and the protection of their investment in the infrastructure.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed

rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**010. DEFINITIONS.**

Refer to ~~Rule~~ IDAPA 39.03.01, “Rules Governing Definitions,” for definitions of the terms used in this Rule. (10-2-89)(\_\_\_\_)

**011. -- 099. (RESERVED).**

**100. GENERAL OVERSIZE LIMITATIONS.**

**01. Maximum Dimensions Allowed.** The maximum dimensions of oversize vehicles or oversize loads shall depend on the character of the route to be traveled: width of roadway, alignment and sight distance, vertical or horizontal clearance, and traffic volume. Overlegal permits will not normally be issued for movements which cannot allow for the passage of traffic as provided in IDAPA 39.03.11, “Rules Governing Overlegal Permittee Responsibility and Travel Restrictions,” Subsection 100.05, except under special circumstances when an interruption of low volume traffic may be permitted (not to exceed ten (10) minutes) or when adequate detours are available. (4-5-00)

**02. Practical Minimum Dimension.** Oversize loads shall be reduced to a practical minimum dimension. Except as noted below, permits will not be issued to exceed legal size if the load is more than one (1) unit in width, length or height nor shall permits be utilized for multiple unit loads which may be reduced in number of units and positioned to meet legal dimensions established in Section 49-1010, Idaho Code. (8-25-94)

**03. Multiple Unit Overwidth Loads.** Multiple unit overwidth loads must be transported on legal dimension vehicles. Overwidth loads may be transported on ~~extra-length~~ double trailer combinations not exceeding seventy-five (75) feet combination length exclusive of load overhang. (8-25-94)(\_\_\_\_)

**04. Overwidth Overhang.** Over width loads shall distribute overhang to the sides of the trailer as evenly as possible. (8-25-94)

## **IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

### **39.03.17 - RULES GOVERNING PERMITS FOR MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS**

**DOCKET NO. 39-0317-0701**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-312 and 49-1004, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**This rulemaking provides for less restrictive options for connection devices between a manufactured home and the towing vehicle, in compliance with 49 CFR, Part 393, Subpart F, Coupling Devices and Towing Methods.**

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Volume 07-10, pages 430 through 432.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 14th day of November, 2007.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **August 1, 2007**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 40-312 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**This rulemaking provides compliance with 49 CFR, Part 393, Subpart F, Coupling Devices and Towing Methods, which allows less restrictive options for connection devices between a manufactured home and the towing vehicle.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This action provides compliance with the Code of Federal Regulations. (49 CFR, Part 393)

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action is necessary for compliance with the Code of Federal Regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**010. DEFINITIONS.**

Refer to ~~Rule~~ IDAPA 39.03.01, "Rules Governing Definitions," for definitions of the terms used in this Rule. ~~(10-2-89)~~( )

***(BREAK IN CONTINUITY OF SECTIONS)***

**200. MANUFACTURED HOMES AND OFFICE TRAILERS BEING TOWED.**

**01. Connection Device.** ~~A ball hitch coupler.~~ Shall meet the requirements of Federal Motor Carrier Safety Regulations, 49 CFR part 393. ~~(10-2-89)~~( )

**02. Length.** Not in excess of eighty (80) feet including tongue. (10-2-89)

**03. Width.** Shall be limited to a maximum of sixteen (16) feet at the base and shall not exceed eighteen (18) feet overall width including the eaves.

**\*\* Determination of manufactured home or office trailer width shall be exclusive of such appurtenances as clearance lights, door handles, window fasteners, door and window trim, moldings and load securement devices up to but not in excess of three (3) inches on each side of load.** (3-23-98)

**04. Eaves.** No restrictions on eaves as long as the eighteen (18) feet maximum overall width limitation is not exceeded. (4-11-06)

**05. Weight.** The maximum allowable load for any vehicle tire operated on any public highway shall be in accordance with Code of Federal Regulations, Title 24, Chapter 20, Office of Assistant Secretary for Housing - Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280, Subpart J, (CFR Title 24). (3-23-98)

**06. Running Gear Assembly -- General.** The entire system (frame, drawbar, and coupling mechanism, running gear assembly including brake systems, axles and lights) shall be in accordance with CFR Title 24, for the year the manufactured home was built. In addition thereto,

all tires used in transportation of manufactured homes under this category shall be in accordance with Federal Motor Carrier Safety Regulations, part 393. (3-23-98)

**07. Construction.** Construction shall be in accordance with CFR Title 24, for the year the manufactured home was built. (3-23-98)

**08. Axles.** All axles shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have a minimum of four (4) axles. (3-23-98)

**09. Brakes.** Brakes shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have brakes on a minimum of three (3) axles. (3-23-98)

**10. Lights.** The unit shall have stop lights, turn signals and tail lights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. (3-23-98)

**11. Safety Chains.** Two (2) safety chains shall be used, one (1) each on right and left sides of, but separate from, the coupling mechanism connecting the tow vehicle and the manufactured home while in transit. Chain shall be three-eighths (3/8) inch diameter steel. Chains shall be strongly fastened at each end to connect the tow vehicle and manufactured home and assure that in the event of a coupling failure the manufactured home will track behind the tow vehicle. (3-23-98)

## 201. VEHICLES FOR TOWING MANUFACTURED HOMES AND OFFICE TRAILERS.

**01. Towing Vehicle.** Tow vehicles for manufactured homes and office trailers shall comply with the following minimum requirements:

Manufactured Homes and Office Trailers Width	Tire Width	Drive Axle Tire Rating	Min. Unladen Weight	Rear Axle Rating
Over 8' to 10'	7.00"	6 Ply	6,000#	None
Over 10'to 12'	8.00"	8 Ply	8,000#	15,000#
Over 12'	8.25"	10 Ply	12,000#	15,000#

(3-23-98)

**02. Brakes.** Shall be in accordance with Federal Motor Carrier Safety Regulations part 393. (8-25-94)

**03. Rear Axle.** Towing vehicle shall have a minimum of a single axle with dual mounted tires. (8-25-94)

**04. ~~Hitch Assembly~~ Connection Device.** Shall meet the requirements of Federal

Motor Carrier Safety Regulations, part 393.

~~(8-25-94)~~( )

**05. Horsepower Requirement.** When towing a manufactured home or office trailer a minimum speed of twenty-five (25) mph must be maintained. (3-23-98)

**06. Two-Way Radio.** (3-23-98)

**a.** On all movements requiring a pilot/escort vehicle, both the towing unit and the pilot/escort vehicle(s) shall be equipped with two-way radio equipment, licensed under Federal Communications Commission regulations adequate to provide reliable voice communication between the drivers thereof at all times during the movement of the escorted load. Transmitting and receiving capabilities of the radio equipment used shall be adequate to provide the required communication over a minimum distance of one-half (1/2) mile separation under conditions normally encountered along the proposed route. (4-5-00)

**b.** Radio communication shall be open and monitored between pilot/escort vehicle(s) and oversize load at all times during movement. (4-5-00)

**07. Operator Requirements.** Operators of vehicles towing manufactured homes, modular buildings and office trailers over ten (10) feet wide at the base shall have a class A or B Commercial Driver's License (CDL) as appropriate. (3-23-98)

**08. Speed Limit Requirements.** Vehicles towing manufactured homes, modular buildings and offices, shall be limited to a maximum of sixty (60) miles per hour. (3-23-98)